

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD PRINTUP,
Petitioner

v.

COMMONWEALTH OF
PENNSYLVANIA, *et al.*,
Respondents

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CIVIL NO. 1:12-CV-1098

O R D E R

The background of this order is as follows:

Petitioner commenced this action by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on June 11, 2012. On September 14, 2012, Respondent District Attorney of Dauphin County filed a motion to dismiss (Doc. 9). On April 11, 2013, Magistrate Judge Schwab issued a report and recommendation (“R&R”) (Doc. 17), concluding that the motion to dismiss should be granted, and recommending that the petition be dismissed and the case file be closed. Petitioner filed objections to the R&R on April 17 (Doc. 18). The R&R is now ripe for our review.

The R&R recommends dismissal of the petition on the basis that it is a second or successive petition, but Petitioner has not obtained leave from the U.S. Court of Appeals for the Third Circuit to file a second or successive petition, and therefore, the petition is barred. The R&R notes that Petitioner relies on Martinez v. Ryan, 132 S. Ct. 1309 (2012), a case under which certain procedural defaults may be excused. However, Martinez does not permit Petitioner to avoid the bar that applies to a second or successive habeas petition. The R&R also addresses Petitioner’s

argument that the petition should be transferred to the Court of Appeals, but not dismissed, if this court cannot consider his claims. Magistrate Judge Schwab rejected this argument and concluded that it would not be in the interests of justice to transfer this petition to the Court of Appeals.

Petitioner's objections to the R&R largely consist of arguments intended to support the merits of the petition. Ultimately, however, Petitioner acknowledges the Magistrate Judge's finding that the petition is barred as a second or successive petition (see Doc. 18 at 9), and he requests that we transfer his petition to the Third Circuit pursuant to Munchinski v. Wilson, 694 F.3d 308 (2012). After review of Munchinski, we are not persuaded that transfer is appropriate in this case. There were unique factual circumstances in Munchinski that made transfer appropriate in that case, but this case is distinguishable. We agree with Magistrate Judge Schwab that transfer is not appropriate in this case, for the reasons set forth in the R&R.

Upon independent review of the record, we conclude that the R&R should be adopted, and Petitioner's objections should be overruled. ACCORDINGLY, this 14th day of May, 2013, upon consideration of the Report and Recommendation of Magistrate Judge Schwab (Doc. 17), it is ORDERED that:

1. The R&R (Doc. 17) is adopted.
2. The motion to dismiss (Doc. 9) is GRANTED. The petition for writ of habeas corpus (Doc. 1) is DISMISSED.
3. The Clerk of Court is directed to close this case.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge